

ANNUAL REPORT
OF THE
CRIMINAL LAW AND SENTENCING
POLICY STUDY COMMITTEE



Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204

December, 2010

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CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 2-5.5-5 creating the Criminal Law and Sentencing Policy Study Committee. The Committee is established to evaluate criminal laws, sentencing laws, and policies as they relate to:

- (1) the purposes of the criminal justice and corrections systems;
- (2) the availability of sentencing options; and
- (3) the inmate population in department of correction facilities.

IC 2-5.5-5-13 charges the Committee with the following:

- (1) Conduct a continuing study of the laws relating to:
 - (A) the investigation of crimes;
 - (B) the prosecution of crimes;
 - (C) criminal procedures;
 - (D) alternative sentencing programs;
 - (E) the department of correction;
 - (F) parole;
 - (G) probation;
 - (H) community corrections;
 - (I) home detention programs;
 - (J) criminal registries;
 - (K) victim rights;
 - (L) the classification of criminal offenses into felony and misdemeanor categories;
 - (M) sex offenders; and
 - (N) juvenile offenders.
- (2) Study federal requirements or incentives for states to pass certain laws or establish specific programs.
- (3) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems.
- (4) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems.
- (5) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems.
- (6) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems.

The Legislative Council assigned the following additional responsibilities to the Committee:

- (1) Study whether individuals on parole should be eligible to receive credit time to potentially shorten their period of parole (SEA 81-2010).
- (2) Study the sending of sexually suggestive or sexually explicit material over the Internet or by use of a cellular telephone or similar device by minors, including whether

school corporations should adopt policies regarding this topic (SEA 81-2010, SEA 224-2010).

(3) Study the effects of methamphetamines on state and local governments and individuals (HEA 1320-2010).

II. SUMMARY OF WORK PROGRAM

The Committee met four times during the 2010 interim, on August 25, September 8, September 29, and October 21. All meetings were held at the State House in Indianapolis.

III. SUMMARY OF TESTIMONY

For a more detailed account, minutes for the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>

August 25, 2010 Meeting

Sexting

Nancy Willard, of the Center for Safe and Responsible Internet Use, gave a presentation about cyberbullying and sexting. She also discussed the issues of revenge porn, the receipt of unsolicited sexual images, and the steps that other states are taking to combat these issues.

Gilbert Holmes, Executive Director of the American Civil Liberties Union of Indiana, testified that restrictions on sexting could be a violation of the first amendment to the constitution and that education is the way to reduce sexting.

Eric Scheub, the Media and Public Relations director for the Indiana Coalition Against Sexual Assault, spoke about the challenges facing families and educational institutions given the large number of teens who have cell phones and other electronic media devices. He also noted that these devices are ingrained in the culture of teens.

September 8, 2010 Meeting

Methamphetamines

Sgt. Niki Crawford, of the Indiana State Police Methamphetamine Suppression Unit, reported on the high cost of investigating and policing methamphetamines in Indiana.

Dennis Wichern, from the Indianapolis office of the Drug Enforcement Administration (DEA), spoke about the DEA's efforts to stop the production and distribution of methamphetamines.

Jerry Vance, Director of Programs for the Indiana Department of Correction (DOC), spoke about the DOC's efforts to treat methamphetamine addicts who are incarcerated at the DOC.

Robert Bovett, District Attorney for Newport, Oregon, gave a presentation concerning Oregon making pseudoephedrine and ephedrine scheduled drugs. He also discussed the effects of Mexico outlawing pseudoephedrine, which has resulted in a weaker form of methamphetamine being smuggled into the United States.

Holly Hopper, of the National Drug Endangered Children Training and Advocacy Center, discussed her organization's mission to rescue child victims of drug-related crime. Her organization teaches law enforcement officers, social service workers, and medical and mental health care providers special methods of investigation and assessment that can improve the ability of the system to protect children who are discovered living in and endangered by dangerous drug environments.

Steve Johnson, Executive Director of the Indiana Prosecuting Attorneys Council, discussed Indiana's laws concerning possession, dealing and manufacturing of methamphetamine.

Judge Jonathan Webster, of the Jennings Circuit Court, spoke about how methamphetamines have affected Jennings County.

Alan Marshall, the Jennings County Prosecuting Attorney, spoke about the mentality of methamphetamine addicts and how criminal penalties do not matter to these addicts.

Amy Travis, Chief Deputy Prosecutor for Jackson County, made a presentation on methamphetamines cases in Jackson County and asked the Committee to approve legislation making pseudoephedrine a scheduled drug.

Gary Ashenfelter, of the Indiana Drug Enforcement Association, spoke about drug abuse issues in Indiana and asked the Committee to approve legislation making pseudoephedrine a scheduled drug.

Senator Carlin Yoder spoke about the challenges of coming up with the perfect legislative solution to the methamphetamine problem. He also discussed how methamphetamines have affected the district he represents.

Sheriff Jon Marvel, of Vigo County, spoke about methamphetamine problems in Vigo County and the costs of investigating and prosecuting methamphetamine crimes.

Mark Sentor, Mayor of Plymouth, spoke about how methamphetamines have affected Plymouth.

Mandy Hagen, of the Consumer Healthcare Products Association, spoke about sales of pseudoephedrine nationwide. She also discussed that her association opposes making pseudoephedrine a scheduled drug because data indicates that the states with the highest usage of methamphetamines do not have the highest sales of pseudoephedrine.

Steve Luce, Executive Director of the Indiana Sheriff's Association, discussed methamphetamine issues and how his association backs electronic tracking to track and apprehend methamphetamine abusers and manufacturers.

Sheriff Keith Cain, of Davis County, Kentucky, spoke about methamphetamine use in Kentucky and how time consuming and expensive the battle is. Sheriff Cain favors electronic tracking so that pseudoephedrine can be stopped at the point of purchase and not after the sale has been made.

Sergeant Stan Salyards, of the Louisville Metro Police Department, spoke about electronic tracking in Kentucky and why he is not in favor of electronic tracking. He believes the expenses associated with the tracking could be better used for law enforcement methamphetamine task forces and similar programs.

Captain Faith Bell, of the Bay County Florida Sheriff's Department, discussed methamphetamine issues in Florida and how her law enforcement agency has investigated pseudoephedrine crimes.

Michael Rinebold, Director of Government Relations for the Indiana State Medical Association, spoke about this association's concerns about making pseudoephedrine a scheduled drug.

September 29, 2010 Meeting

Pedestrian safety

Rebecca Shrode discussed the issue of pedestrian safety. Ms. Schrode also described how her mother was struck by a vehicle in a gas station parking lot, which resulted in her mother dying from injuries sustained in the collision. Ms. Schrode suggested toughening sanctions on those who cause the death of a pedestrian while driving a vehicle.

Parole eligibility for pre-1977 multiple life sentence inmates

Charles Asher, an attorney with the Freedom 22 Foundation, spoke about parole eligibility for inmates who were given multiple life sentences before 1977. Currently these individuals are not eligible for parole while inmates convicted and sentenced after 1977 could have received lesser sentences and be eligible for parole.

Credit time for parolees

Tim Brown, of the Indiana Department of Corrections, discussed whether individuals on parole should be eligible to receive credit time to potentially reduce the time that they are on parole. Mr. Brown indicated that with the short amount of time the DOC has been running this project, they currently are unable to know if this is an effective program.

Community Corrections Issues

Kelly Bittorf, Executive Director of Lake County Community Corrections, spoke about the programs offered by her agency. She also discussed that community corrections is less costly than incarceration and can have a lower recidivism rate than sending offenders to the DOC for certain offenses.

GPS monitoring systems for post-incarceration monitoring

Adam Deming, executive director of the Indiana Sex Offender Management and Monitoring Program, gave a presentation about the effectiveness of GPS monitoring of sex offenders.

October 21, 2010 Meeting

The Committee considered bill drafts at this meeting. The descriptions of the drafts and the votes are reflected below in SECTION IV.

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee did not make any findings of fact.

The Committee recommended the following legislative drafts:

(1) PD 3092: Criminal Law and Sentencing Policy Study Committee

PD 3092 relocates the statute establishing the Criminal Law and Sentencing Policy Study committee.

The Committee voted 11-0 to recommend PD 3092 to the 2011 General Assembly.

(2) PD 3431: Parole

PD 3431 provides that certain individuals who are serving a sentence for multiple felonies or multiple life sentences are eligible for parole after serving 30 years.

The Committee voted to recommend PD 3431, but not to apply to sex offenders, to the 2011 General Assembly.

(3) PDOC: GPS Monitoring and Parole

This draft requires individuals convicted of child molesting to wear a GPS tracking device based upon the recommendation of the Director of Parole Services and a validated recidivism risk assessment. The draft also permits the parole board to require other sex and violent offenders to wear GPS tracking devices if this is recommended by the Director of Parole Services and a validated recidivism risk assessment.

The Committee voted 11-0 to recommend this draft to the General Assembly.

(4) PD 3461: Dissemination of Sexual Material

PD 3461 provides defenses to the crimes of disseminating matter that is harmful to minors, child exploitation and possession of child pornography.

The Committee voted 11-0 to recommend this draft, with amended language that the defenses do not apply to a person other than the person who sent the image or is depicted in the image.

(5) PD 3448: Invasion of Privacy by Photography

PD 3448 makes it a Class A misdemeanor for a person to surreptitiously photograph the private area of an individual under circumstances in which a reasonable person would believe that the person's private area is not visible to the public.

The Committee voted 10-1 to recommend this draft to the General Assembly.

PD 3433: Methamphetamines

PD 3433 creates a statewide pseudoephedrine tracking system.

PD 3433 was approved by the Committee 10-1.

The Committee members approved the final report 10-0.

WITNESS LIST

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Eric Scheub, Media and Public Relations Director for the Indiana Coalition Against Sexual Assault
Nancy Willard, Center for Safe and Responsible Internet Use

September 8, 2010 Meeting

Gary Ashenfelter, Indiana Drug Enforcement Association
Captain Faith Bell, Bay County, Florida Sheriff's Department
Robert Bovett, District Attorney, Newport, Oregon
Sheriff Keith Cain, Davis County, Kentucky Sheriff's Department
Sgt. Niki Crawford, Indiana State Police
Mandy Hagen, Consumer Healthcare Products Association
Holly Hopper, Director of the National Drug Endangered Children Training and Advocacy Center
Steve Johnson, Executive Director of the Indiana Prosecuting Attorneys Council
Steve Luce, Executive Director of the Indiana Sheriff's Association
Alan Marshall, Jennings County Prosecuting Attorney
Sheriff Jon Marvel, Vigo County Sheriff's Department
Michael Rinebold, Indiana State Medical Association
Mayor Mark Sentor, Plymouth, Indiana
Sergeant Stan Salyards, Louisville, Kentucky Metro Police Department
Amy Travis, Jackson County Prosecuting Attorney's Office
Jerry Vance, Director of Programs, Indiana Department of Correction
Judge Jonathan Webster, Jennings Circuit Court
Dennis Wichern, Drug Enforcement Administration
Senator Carlin Yoder

September 29, 2010 Meeting

Charlie Asher, Freedom 22 Foundation
Kelly Bittorf, Lake County Community Corrections
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Adam Deming, Indiana Sex Offender Management and Monitoring Program
Rebecca Shrode, South Bend